

## **Exhibit 2**

00001

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 IN RE COLUMBIA UNIVERSITY ) CA 04-01592  
4 ) Boston, MA  
5 PATENT LITIGATION, ET AL ) October 6, 2004  
6 )  
7 )  
8 BEFORE THE HONORABLE MARK L. WOLF  
9 UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

11 (As previously noted.)

12 JUDITH A. TWOMEY, RPR  
13 Official Court Reporter  
14 One Courthouse Way  
15 Courtroom 10~Room 5200  
16 Boston, MA 02210  
17 (617)946-2577

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1 described here ever being challenged in the future and is  
2 preserving carefully the ability to challenge it in the  
3 future under this other filing group, that this is  
4 different from Spectronics, and it's different from GAF.

5 THE COURT: Okay.

6 MR. HASSON: On the affiliates issue, your  
7 Honor, to the extent that it is relevant to the court's  
8 discretionary decision in ruling today, we submit it is  
9 before the court in that sense. To the extent that the  
10 court feels that it is not before the court as a literal  
11 matter because the affiliates are not present in the case  
12 at this point, we are under sufficient apprehension that  
13 we think we should do that, and we would simply request  
14 that the court let us know. I would not want to do it in  
15 a way that the court did not like, whether it's a filing,  
16 an amendment, a Rule 15.

17 THE COURT: No, at this point, you can't move to  
18 amend. You've had the briefing and the motion to  
19 dismiss, and there's cases in the First Circuit -- I  
20 don't know what there is in the Federal Circuit, but I  
21 think Kennedy versus Josephthal is one of them, that in a  
22 summary judgment situation, for example, if you're on the  
23 verge of losing a motion for summary judgment, you can't  
24 file a new affidavit to try to put some material fact in  
25 dispute. So I'm going to decide the case on the record



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1 as it now stands. And if there's what you call an  
2 affiliate that's not a party to this case and if I  
3 dismiss this case, then that affiliate can file its own  
4 case the way Idec did.

5 MR. HASSON: Thank you, your Honor.

6 THE COURT: And I assume Columbia will move to  
7 dismiss it, saying there's no case or controversy. And  
8 the facts with regard to that particular party will be  
9 analyzed.

10 MR. HASSON: Thank you, your Honor. I was just  
11 concerned about the court's comment that perhaps it  
12 should have been brought as part of this case. Thank  
13 you.

14 MS. PRUETZ: Your Honor, Adrien Pruetz for  
15 Genentech. I'd just like to make two brief points.

16 First, recognizing that the court has discretion  
17 as to whether it exercises jurisdiction --

18 THE COURT: If I have jurisdiction, I have  
19 discretion. If I have no jurisdiction, I have no  
20 discretion.

21 MS. PRUETZ: That was going to be the essence  
22 of my first point, which is that I believe the court does  
23 have jurisdiction to decide the prosecution laches claim  
24 should it decide to exercise that discretion.

25 The '275 is not a pending patent application.